

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVE OWENS,

Plaintiff,

v.

Case No. 05-C-1002

STATE OF WISCONSIN,

Defendant.

ORDER OF DISMISSAL

Steve Owens filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on September 19, 2005. The petition includes claims for which Owens has not exhausted available state court remedies. It is thus a mixed petition and subject to dismissal. *See Rhines v. Weber*, 125 S. Ct. 1528 (2005). In order to cure this defect, Owens has requested dismissal of his petition without prejudice so that he may exhaust his state court remedies with respect to the unexhausted claims. Owens' motion will be granted. The court notes, however, that there is a one-year statute of limitations for federal review of state court convictions under § 2254. *See* 28 U.S.C. § 2244(d). The statute of limitations begins to run 90 days after the state court conviction becomes final. *Balsewicz v. Kingston*, 425 F.3d 1029, 1032 (7th Cir. 2005). In addition, the time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claims pending is not counted toward any period of limitation under the section. *See* 28 U.S.C. § 2244(d)(1). Because Owen has not requested that his petition be stayed,

and because it appears there is sufficient time for him to exhaust his state court remedies and timely file his §2254 petition, his motion will be granted.

Accordingly, the petition in the above matter is dismissed without prejudice.

SO ORDERED.

Dated this 14th day of November, 2005.

s/ William C. Griesbach

William C. Griesbach

United States District Judge